

FILED BY CLERK

DEC 13 2007

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

CLAUDIO VALDEZ,

Appellant.

)  
)  
) 2 CA-CR 2006-0418  
) DEPARTMENT A  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061470

Honorable Stephen C. Villarreal, Judge

AFFIRMED

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Terry Goddard, Arizona Attorney General  
By Randall M. Howe and Diane Leigh Hunt

Tucson  
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender  
By Stephan J. McCaffery

Tucson  
Attorneys for Appellant

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H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant Claudio Valdez was convicted of one count each of first-degree burglary, kidnapping, armed robbery, aggravated assault, theft of means of transportation, and theft by control. The trial court sentenced him to time served on the theft by control conviction, and concurrent, aggravated, enhanced prison terms totaling twenty-eight years on the remaining five convictions. On appeal from five of the convictions and sentences,<sup>1</sup> he argues his enhanced sentences are illegal because the jury, not the trial court, found that he had historical prior felony convictions for sentence enhancement purposes. Because Valdez has not established fundamental, prejudicial error, we affirm.

¶2 Immediately after the jury found Valdez guilty, the trial court held a prior convictions trial before the jury. Although the reason for having the jury decide the issue of prior convictions for enhancement is not clear from the record, the parties and court may have simply combined the enhancement issue with other sentencing issues.<sup>2</sup> The jury found the prior convictions proved beyond a reasonable doubt, and the court subsequently sentenced Valdez to prison terms that were enhanced by two of his prior felony convictions. The court also aggravated the sentences based on the other prior conviction.

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<sup>1</sup>Valdez does not appeal from the conviction for theft by control or the sentence he received for that conviction.

<sup>2</sup>Because we cannot determine on the record before us why the issue was tried to the jury and not the court, we reject the state's assertion that Valdez invited the error he now challenges on appeal.

¶3 Valdez now argues the trial court reversibly erred by permitting the jury to find the existence of two historical prior felony convictions for sentence enhancement purposes because A.R.S. § 13-604(P) provides for enhanced sentences when prior felony convictions are “found by the court.” Valdez contends he preserved this issue for review by objecting to the jury instructions regarding the prior convictions. But he objected, on hearsay grounds, to including in the jury instructions the offense dates and sentencing dates of the prior convictions. He did not argue that it was inappropriate for the jury to find the existence of prior convictions. An objection on one ground does not preserve other grounds for appeal. *See State v. Moody*, 208 Ariz. 424, ¶ 120, 94 P.3d 1119, 1150 (2004). Accordingly, Valdez has forfeited all but fundamental error on review. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Fundamental error is “error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial.” *Id.*, quoting *State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984). “To prevail under this standard of review, a defendant must establish both that fundamental error exists and that the error in his case caused him prejudice.” *Id.* ¶ 20.

¶4 Valdez does not argue that any error was fundamental or prejudicial. Instead, he merely contends that the enhanced sentences are illegal. But the sentences are within the statutory limits. *See* § 13-604(D). And he cites no authority supporting his contention that the procedure used here resulted in illegal sentences. Furthermore, even if he could show

fundamental error in the procedure, he would still have to show prejudice. *See Henderson*, 210 Ariz. 561, ¶ 20, 115 P.3d at 607. He does not attempt to do so. Accordingly, he has not carried his burden to establish fundamental error. *Cf. State v. Cleere*, 213 Ariz. 54, ¶¶ 11-12, 138 P.3d 1181, 1185-86 (App. 2006) (affirming sentence when defendant could not show prejudice even assuming fundamental error under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), because reasonable jury would not have reached different conclusion than trial court regarding existence of aggravating factor).

¶5 For the foregoing reasons, we affirm Valdez's convictions and sentences.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge